

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-516-C - ORDER NO. 2001-97
FEBRUARY 2, 2001

IN RE: Petition of Adelphia Business Solutions of)	
South Carolina, Inc. for Arbitration of an)	ORDER DENYING
Interconnection Agreement with BellSouth)	MOTION FOR PARTIAL
Telecommunications, Inc. Pursuant to Section)	RECONSIDERATION
252(b) of the Communications Act of 1934,)	AND CLARIFICATION
as Amended by the Telecommunications Act)	
of 1996.)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Motion for Partial Reconsideration and Clarification filed by Adelphia Business Solutions of South Carolina, Inc. ("Adelphia"). By its Motion, Adelphia requests that the Commission reconsider and clarify its Order No. 2001-045, dated January 16, 2001, entitled "Order On Arbitration."¹ Commission Order No. 2001-045 set forth the Commission's decision in the instant docket concerning the Petition of Adelphia requesting arbitration of certain terms of an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). Adelphia's Petition requesting

¹ *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Order on Arbitration, Order No. 2001-045, Docket No. 2000-516-C (January 16, 2001) (hereafter cited to as "Order").*

arbitration was filed pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

By its Motion, Adelphia requests that the Commission reconsider that part of its decision concluding that Adelphia must pay BellSouth originating access charges when a BellSouth customer calls an Adelphia customer who has a telephone number with an NXX code associated with the same local calling area as the originating BellSouth customer but is physically located in a different local calling area.² In the alternative, Adelphia requests that the Commission clarify that if “virtual NXX” traffic is to be treated as interexchange traffic subject to access charges, then Adelphia is permitted to bill BellSouth originating access for “virtual NXX” calls originated by Adelphia’s customers.

PROCEDURAL HISTORY

1. On October 11, 2000, Adelphia filed its Petition after Adelphia and BellSouth were unable to reach agreement on all issues despite good faith negotiations between the parties.

2. Adelphia’s Petition presented five unresolved issues. BellSouth filed a Response on November 3, 2000, and added one additional issue.

3. On or about December 20, 2000, the parties advised the Commission that, through negotiations that had continued after the Petition had been filed, the parties had resolved five of the six issues initially presented for arbitration.

² This arrangement is otherwise known as “virtual NXX” because the called party has a “virtual” presence in the local calling area to which the NXX is associated.

4. With the concurrence of the Commission, the parties stipulated the pre-filed testimony into the record, waived a hearing, and submitted briefs addressing the one remaining issue in this proceeding.

5. The remaining issue is Issue 2. Issue 2 presented two sub-issues:

(A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customer?

(B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX code based upon the location of any one customer?

6. On January 16, 2001, after consideration of the record, the Commission issued its decision in Order No. 2001-045. On Issue 2(A), the Commission found that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated."³ On Issue 2(B), the Commission found that "BellSouth is not obligated to carry [calls to Adelphia's virtual NXX customers] at no cost" and concluded that "originating access charges are to be allowed for this traffic."⁴

DISCUSSION

In its decision in Order No. 2001-045, the Commission first considered whether calls to "virtual NXX" numbers are subject to reciprocal compensation. In determining that such calls are not subject to reciprocal compensation, the Commission concluded

that reciprocal compensation is not due to calls placed to "virtual NXX" numbers as the calls do not terminate within

³ Order at 7.

⁴ Order at 13.

the same local calling area in which the call originated. As noted above, the FCC rules require reciprocal compensation only for the transport and termination of local telecommunications traffic which is defined as traffic “that originates and terminates within a local service area established by the state commission.” Typical traffic associated with a “virtual NXX” number does not originate and terminate within the same local calling area. Therefore, traffic associated with a “virtual NXX” number does not meet the definition of local telecommunications traffic and thus cannot be subject to reciprocal compensation.⁵

While Adelphia does not agree with the portion of the Commission’s decision exempting “virtual NXX” calls from reciprocal compensation, Adelphia does not seek reconsideration of that portion of the Commission’s decision.⁶

By its Motion, Adelphia asserts two arguments in its requests for reconsideration. First, Adelphia asserts that the Commission’s decision to allow originating access charges overcompensates BellSouth because local rates presumably compensate BellSouth for origination and transport of these “virtual NXX” calls. Second, Adelphia asserts that BellSouth should not be compensated through access charges because BellSouth incurs no costs to transport “virtual NXX” traffic” outside the local calling area with which the NXX is associated.

In its first argument, Adelphia argues that the Commission’s determination that Adelphia must pay BellSouth originating access charges when a BellSouth customer calls an Adelphia customer with a “virtual NXX” number will overcompensate BellSouth and will leave Adelphia uncompensated for the services it provides in transporting and

⁵ Order at 7-8 (citations omitted).

⁶ Motion at 5.

terminating the call.⁷ In support of its position, Adelphia contends that “historically, where the NXX codes of the calling and called party are associated with the same local calling area, BellSouth has rated and billed those calls as local.”⁸ Adelphia points to BellSouth’s FX service in support of its argument and states that “BellSouth admits that (1) calls placed to these FX numbers have been treated as ‘local’ if they originated in the local calling area associated with the number, and (2) it has collected reciprocal compensation from other carriers for terminating calls to its FX customers.”⁹ Adelphia further asserts that “BellSouth has admittedly booked revenues associated with its FX service as local.”¹⁰ Adelphia reasons that “since BellSouth has treated this virtual NXX traffic as local for billing purposes, it was also treated as local when BellSouth sought, and the Commission established, BellSouth’s local rates” and thus “costs for the origination component presumably were included in evidence presented to the Commission and it is likely that the Commission considered these costs when it established BellSouth’s local rates.”¹¹ Thus Adelphia claims that the issue before this Commission should be limited to the compensation for the terminating component of the call and not the originating component of the call.¹²

⁷ Motion at 3.

⁸ Motion at 4.

⁹ Motion at 4 (citation omitted).

¹⁰ Motion at 4. Adelphia argues that BellSouth has admitted to this fact in proceedings with Adelphia on this issue in other states. In support of that contention, Adelphia attaches a response filed by BellSouth when responding to Adelphia’s Data Requests in a proceeding before the Kentucky Public Service Commission. However, this information was not before this Commission in the record stipulated by the parties, and it is not proper for Adelphia to introduce new evidence to this Commission on a Motion for Reconsideration.

¹¹ Motion at 5.

¹² *Id.*

Second, Adelphia argues that BellSouth should not be compensated through access charges when it incurs no costs to transport “virtual NXX” traffic outside the local calling area with which the NXX is associated.¹³ Adelphia claims that BellSouth’s costs of originating locally-dialed calls from its customers to Adelphia customers do not vary based upon the location of Adelphia’s customer.¹⁴ Further, Adelphia contends that BellSouth transports all of its customers’ locally-dialed calls bound to Adelphia’s customers to Adelphia’s Point of Interconnection (“POI”) and that Adelphia, not BellSouth, provides the transport of these calls.¹⁵

As noted above, this Commission, in ruling on this issue, was first called upon to determine whether calls to “virtual NXX” numbers were subject to reciprocal compensation. In making that determination, the Commission found that “typical traffic associated with a ‘virtual NXX’ number does not originate and terminate within the same local calling area.”¹⁶ The Commission concluded “[t]herefore, traffic associated with a ‘virtual NXX’ number does not meet the definition of local telecommunications traffic and thus cannot be subject to reciprocal compensation.”¹⁷ In reaching its decision, the Commission noted that “virtual NXX” is similar to FX service provided by an ILEC.¹⁸ The Commission also noted that “unlike FX service, ‘virtual NXX’ does not use lines dedicated to [a] particular customer for transporting the call between rate centers.”¹⁹

¹³ Motion at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Order at 8.

¹⁷ *Id.*

¹⁸ Order at 5.

¹⁹ *Id.*

Further, the Commission acknowledged that “‘virtual NXX’ also closely parallels 800 service.”²⁰

The FX service, which Adelphia uses for comparison purposes in its argument, is for all practical purposes a long distance service. With FX service, the receiving end user pays for the toll charges in the form of dedicated access from the real NPA/NXX office to the FX office.²¹ While it may be true as asserted by Adelphia that BellSouth “books” revenues from such calls as local revenue, the Commission does not find that argument dispositive of the issue. Further, the fact that BellSouth has collected reciprocal compensation from CLECs who deliver traffic to BellSouth’s FX customers is not dispositive.²² In Order No. 2001-045, the Commission found that “virtual NXX” traffic does not meet the definition of local telecommunications traffic.²³ As “virtual NXX” traffic is non-local traffic, reciprocal compensation cannot not apply. A call from a BellSouth end user in one local calling area to an Adelphia end user in a different local calling area will be a long distance call even if Adelphia has assigned a “virtual NXX” number to its customer. Long distance calls have different compensation mechanisms from local calls.

²⁰ *Id.*

²¹ See Direct Prefiled Testimony of John A. Ruscilli (hereafter Ruscilli Direct) at 14, ll.7-12.

²² There are instances where BellSouth would be entitled to collect reciprocal compensation for calls placed to BellSouth’s FX customers. A CLEC is allowed to designate the local calling area for calls originated by the CLEC’s customers. By way of example, if a CLEC has designated an entire LATA as the local calling area for calls originated by its customers and a CLEC customer located in that LATA calls an FX number reaching a BellSouth FX customer located in the same LATA, that call originates and terminates within the same local calling area designated by the CLEC. Therefore, the call would be a local call, and BellSouth would be entitled to reciprocal compensation from the CLEC for transporting and terminating that call to the BellSouth FX customer. However, this situation is not the “typical” call utilizing FX service.

²³ Order at 8.

The “virtual NXX” call that is discussed in the context of this case does not use dedicated facilities for transporting the call between rate centers but instead is routed over trunking facilities to a distant location that would normally incur a toll charge for the originating customer.²⁴ In this context, “virtual NXX” calls are closely related to 800 service.²⁵ With 800 service, access charges apply.²⁶

With FX service and 800 service, the call appears local to the originating caller in that the originating caller is not billed for a call that would otherwise be a toll call. However, there are costs associated with both types of service, and the receiving end user pays for the charges. With FX service, BellSouth charges the FX customer the appropriate charges to recover BellSouth’s costs, including the rate elements associated with local channel, exchange access, mileage charges, and interexchange terminals.²⁷ While BellSouth does not collect toll charges from the originating end user who calls the FX number, BellSouth does collect these charges from the FX subscriber. Likewise, with 800 service, the customer subscribing to the 800 service pays the 800 service charges in lieu of the calling party paying toll usage charges.²⁸

Similarly, while a “virtual NXX” call appears like a local call to the originating caller, the “virtual NXX” call more closely resembles a long distance call in that it originates in one local calling area and terminates in another local calling area. Furthermore, there are costs associated with “virtual NXX” beyond those costs associated with a truly local call. While Adelphia’s position would place the burden for these costs

²⁴ Ruscili Direct at 4, ll. 18-24.

²⁵ *Id.*

²⁶ *Id.* at 15, ll. 1-3.

²⁷ *Id.* at 23, ll. 15-20.

on BellSouth, the Commission's decision to allow originated access charges for this traffic requires Adelphia to pay those charges. In turn, Adelphia may recover those costs from its customer, who is the party benefiting from the service. To recover the costs from the customer would then treat the "virtual NXX" customer like the FX service customer and the 800 service customer, who must each pay for the costs of the service received.

Adelphia then asserts that BellSouth is not entitled to receive originating access charges because BellSouth incurs no costs to transport "virtual NXX" traffic outside the local calling area with which the NXX is associated."²⁹ This assertion is not correct. BellSouth does incur costs to take this traffic outside the BellSouth local calling area. As noted above, the "virtual NXX" call described by Adelphia is routed over trunking facilities to a distant location that would normally incur a toll charge for the originating customer.³⁰ The originating access charges are intended to compensate for these costs. Thus, Adelphia's assertion that BellSouth is being compensated for a service that it does not provide is without merit.

Next, Adelphia requests explanation on the Commission's conclusion that "imposition of originating access charges ... does not ... create an economic barrier to any other providers providing service to ISPs and [does not] give BellSouth a significant competitive advantage"³¹ Adelphia asserts that this conclusion will have dramatic repercussions for South Carolina consumers.³² As examples of the consumers affected by the Commission's decision, Adelphia cites "those business consumers who desire to

²⁸ Id. at 24, ll. 1-5.

²⁹ Motion at 6.

³⁰ Ruscilli Direct at 4, ll. 18-24.

³¹ *Id.*

expand the reach of their businesses without incurring additional costs and those customers in the rural or sparsely populated areas that particularly benefit from being able to reach long distance businesses by making a local call.”³³

Adelphia’s own example provides the explanation that Adelphia seeks. Adelphia states in its example that the Commission’s decision will impact “those business consumers who desire to expand the reach of their businesses without incurring additional costs.”³⁴ Were there no costs associated with this mechanism for businesses to expand their reach, in this case the use of “virtual NXX” calls, then there would be no issue before this Commission. But as discussed above, there are costs associated with “virtual NXX” calls. And the issue before this Commission is who should bear the burden of those costs. By its decision, the Commission has stated that Adelphia, as the provider of the service, is responsible for those costs to BellSouth. But Adelphia is not ultimately responsible for those costs. Adelphia may in turn charge its customers for those costs. Then, the customers, who require the service and who are the beneficiaries of the service, would be the ones who pay the costs of the service. The Commission’s decision appropriately places the costs for this service on the carrier whose provision of the service causes the cost. That carrier may in turn recover the costs from its customer who benefits from the service. However, in providing services to its customers, Adelphia should not be permitted to foist the costs of the services that it provides to its customers onto BellSouth. Just as FX service customers and 800 service customers must pay their

³² *Id.*

³³ *Id.* at 6-7.

³⁴ *Id.* at 6 (emphasis added).

provider for the costs associated with those services, so too should subscribers of “virtual NXX” services pay for the costs associated with “virtual NXX.”

Finally, Adelphia requests that the Commission clarify that BellSouth also must pay Adelphia originating access charges when an Adelphia customer calls a BellSouth customer using an arrangement similar to Adelphia’s “virtual NXX” arrangement.³⁵ Adelphia asserts that if its “virtual NXX” service is treated as if it were toll-free interexchange service, then BellSouth’s FX service, and any other service that provides a similar capability, should be treated the same way. Adelphia asserts that if its customers originate calls to BellSouth “virtual NXX” numbers, then Adelphia should be entitled to collect access charges from BellSouth for the use of equivalent network facilities to originate interexchange traffic.

Throughout these proceedings in addressing this “virtual NXX” issue, the Commission has been presented with the example of the BellSouth customer in Orangeburg originating a call to an Adelphia customer physically located in Columbia but with an NXX code from the Orangeburg rate center. This is the typical “virtual NXX” situation. That is, where the customer with the “virtual NXX” is physically located outside the rate center where the NXX code is assigned. However, the example employed throughout the proceedings also focused on the BellSouth local calling areas and the use of “virtual NXX” assignments related to those local calling areas.

Adelphia is free to design its network and to designate its own local calling area. If Adelphia designates an entire LATA as its local calling area, then calls terminating in

³⁵ Motion at 7.

the LATA would be local calls. When an Adelphia customer places a call utilizing a “virtual NXX” arrangement that is a local call within Adelphia’s defined local calling area, Adelphia is not entitled to originating access charges. That is because in those situations, BellSouth is terminating Adelphia’s local traffic. Nothing in the record, however, suggests how Adelphia has chosen to designate its local calling areas in South Carolina.

In the situation of the BellSouth customer calling the Adelphia customer with the “virtual NXX” arrangement, but for the “virtual NXX” arrangement, the BellSouth customer would be charged for a toll call. That is due to the designation of BellSouth’s local calling areas. Adelphia cannot force its local calling area upon BellSouth through the assignment of NXX codes. When a BellSouth customer in a BellSouth local calling area originates a call to an Adelphia customer in a different BellSouth local calling area, originating access is due to BellSouth for that call.

As noted above, the record does not indicate the manner in which Adelphia has designated its local calling areas in South Carolina. However, Order No. 2000-045 provides that originating access charges are applicable to calls going to “virtual NXX” arrangements where the traffic is delivered to customers located outside the local calling area where the call originates.

Based upon the reasoning as set forth above,

IT IS THEREFORE ORDERED THAT:

1. Adelphia’s Motion for Partial Reconsideration and Clarification is denied.

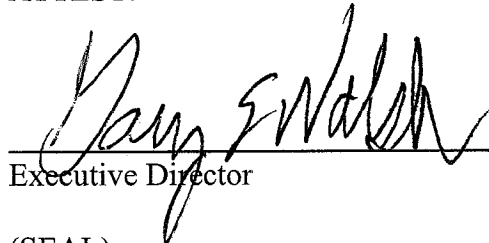
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)